

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

FIRST STUDENT, INC.

Employer

and

Case 14-RC-156864

**TEAMSTERS AUTOMOTIVE, PETROLEUM
AND ALLIED TRADES, LOCAL UNION NO. 50**

Petitioner

DECISION AND ORDER

Petitioner seeks to represent a unit of special education drivers and monitors employed by the Employer at its Belleville, Illinois facility, where the Employer operates school bus transportation services for regular education and special education students enrolled in eight public school districts. The Employer maintains that the unit sought by Petitioner is not appropriate, and that the appropriate unit must also include all drivers and monitors employed by the Employer at the same facility. The Employer has a single driver classification, which for the purposes of the hearing was further delineated as special education drivers, regular education drivers, standby drivers, charter drivers, and trainers.

A hearing officer of the Board held a hearing in this matter and the parties orally argued their respective positions prior to the close of the hearing. As described below, based on the record and relevant Board cases, including the Board's decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), *enfd.* 727 F.3d 552 (6th Cir. 2013), I find that the petitioned-for unit limited to the Employer's special education drivers and monitors is not appropriate. Since the Petitioner does not wish to proceed to an election in any unit other than that sought in the petition, I am dismissing the petition.

THE EMPLOYER'S OPERATIONS

The Employer contracts with eight school districts to provide school bus transportation services for regular and special education students enrolled in public schools around Belleville, Illinois. Until 3 years ago, the Employer's operation was limited to transportation of students enrolled in regular education in the eight districts and special education routes in one of the districts. Three years ago, the Employer bid on and was awarded the contract to also provide transportation for special education students in the eight school districts. The Employer's facility had included a building and a large lot for school bus parking and employee vehicle parking. Upon securing the additional special education contract, the Employer expanded the building by adding a wing, which is referenced as the west wing. The west wing was connected to the existing building, now referred to as the east wing, by a short hallway that includes four adjoining offices.

The location manager is responsible for the overall operations of the Employer's facility and directly oversees the 101 regular education routes and 11 special education routes out of the west wing, referred to as the regular education side. The assistant manager, who reports to the location manager, oversees the 70 special education routes out of the east wing, referred to as the special education side. The Employer also employs two dispatchers, two safety coordinators, a charter manager, a payroll employee, and six mechanics who work in a maintenance shop under the direction of a technician. Neither party contends that any of these employees are included in any unit.

The Employer employs approximately 197 drivers and 53 monitors at its facility. Drivers operate the school buses while monitors, who only are assigned to special education routes, ensure the safety of special education students on the buses. In addition to drivers on regular and

special education routes, the Employer employs about 10 standby drivers, 7 charter drivers, and 4 trainers. Standby drivers fill in for drivers who are unavailable to drive their routes and are assigned to work on either the regular education side or the special education side but may be pulled to either side or a charter based on operational need. Charter drivers have regular assignments to drive for special events such as field trips or sporting activities during school hours when special education or regular education drivers are on their routes. Charter drivers may also drive a special education or regular education route if needed. Trainers are drivers designated to train drivers on regular education routes and special education routes and may also drive special education or regular education routes as needed.

The Employer has a single classification of driver for regular education drivers, special education drivers, standby drivers, charter drivers, and trainers. The regular education side drivers and monitors, including drivers and monitors servicing special education routes from that side, are on one seniority list. The Employer hired the special education side drivers and monitors who were employed by the company that previously held the contract and honored their seniority on a separate seniority list. There is a third seniority list for charter trips that usually occur outside school hours and primarily involve regular education students. Charter work is open to all drivers based on facility-wide seniority, regardless of whether they drive on the regular education or special education side or are standby drivers or trainers.

When the Employer advertises for drivers, it does not specify that drivers will be for regular education or special education. All drivers and monitors complete the same application forms and go through the same screening and hiring process. They are initially screened and interviewed by either of the safety coordinators working the regular education side or the special education side. The qualifications for all drivers are the same. Drivers must hold a Chauffeur's

Driver License (CDL), be Department of Transportation (DOT) certified, pass a physical exam, and hold a medical certificate. All drivers go through the same training with the same trainers regardless of whether they will drive on the regular education side or special education side. This initial training includes special education specific training on transporting wheelchair-bound students and operating wheelchair lifts on buses, including pulling up to curbs to pick up students in wheelchairs. All drivers can operate a bus with a wheelchair lift. If needed, a refresher on wheelchair lift procedures is given to a regular education driver who needs to drive on the special education side due to a transfer, fill-in or other reason. A refresher and demonstration on wheelchair procedures can take as little as a half hour. New hires are typically assigned to the regular education side or the special education side based on the Employer's operational need.

The Employer maintains a fleet of 210 school buses, including 71-passenger school buses used primarily for transporting regular education students and some special education students, and 24-passenger buses used to transport special education students. The smaller buses are typically equipped with wheelchair lifts. Drivers, whether driving regular education or special education routes, follow the same daily routine and procedures in performing pre-trip checks, using the same tools such as a zonar computer system, driving their routes, and on return to the facility performing post-trip procedures. During their route, drivers maintain radio contact with their regular education or special education dispatcher. The regular education side dispatcher and drivers and the special education side dispatcher and drivers operate on different radio frequencies because communications are more difficult when there are more than 100 buses on a frequency.

At the beginning of each school year the Employer schedules separate orientation and training meetings for its drivers and monitors working the regular education side and the special

education side. The meetings cover the same topics and are held in the maintenance shop. A single meeting could be held for all drivers and monitors but for the logistical difficulties posed by the number of drivers and monitors and available space. At the end of their respective orientations and meetings, drivers and monitors bid their routes based on the separate seniority lists for either the regular education side or the special education side. Drivers and monitors usually remain on the regular education side or the special education side. A driver or monitor who requests to be reassigned from one side to the other keeps his or her pay rate but would go to the bottom of the other side's seniority list. The Employer similarly schedules separate safety meetings, which cover the same topics. If a driver or monitor cannot attend their regular safety meeting, they may attend the other meeting.

All drivers, regardless of working the regular education or special education side or as a standby or charter driver, or trainer, have the same hourly wage rates. Similarly, monitors regardless of working on the regular education or special education side, earn the same hourly wage rate. Drivers and monitors are subject to the same terms and conditions of employment set out in an Employee Handbook. All drivers and monitors receive the same benefits including health insurance, 401(k) plan, personal days, holiday pay, awards under a Safe Driver/Monitor program, performance bonuses, and credit union access. Each wing of the Employer's building has its own break room and bathrooms. Each break room has a bulletin board containing identical information and notices for employees. While employees tend to use the facilities in the wing they work out of, they are free to use either break room or bathroom facilities.

The two dispatchers work on either the regular education or special education side of the operations and overlap as necessary to help each other based on operational need. Similarly, the

two safety coordinators implement safety policies and work on either the regular education or special education side and often overlap and to assist the other side.

BOARD LAW

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in an appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. When the Board determines that the unit sought by a petitioner is readily identifiable and employees in that unit share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that the unit employees could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an “overwhelming community of interest” with those in the petitioned-for unit. *Specialty Healthcare*, supra, slip op. at 7.

Thus, the first inquiry is whether the job classifications sought by Petitioner are readily identifiable as a group and share a community of interest. In this regard, the Board has made clear that it will not approve fractured units; that is, combinations of employees that have no rational basis. *Odwalla, Inc.*, 357 NLRB No. 132 (2011); *Seaboard Marine*, 327 NLRB 556 (1999). In determining whether there is a readily identifiable group sharing a community of interest, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002), see

also *Specialty Healthcare*, supra, at 9. Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.*, 256 NLRB 1069, fn. 5 (1981). However, all relevant factors must be weighed in determining community of interest.

With regard to the second inquiry, additional employees share an overwhelming community of interest with the petitioned-for employees only when there “is no legitimate basis upon which to exclude (the) employees from” the larger unit because the traditional community-of-interest factors “overlap almost completely.” *Specialty Healthcare*, supra, at 11-13, and fn. 28 (quoting *Blue Man Vegas, LLC. v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008)). Moreover, the burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip. op. at 3, fn. 8 (2011).

APPLICATION OF BOARD LAW TO THE FACTS OF THIS CASE

The petitioned-for unit of special education drivers and monitors at the Employer’s facility is not an appropriate unit. Even assuming the employees sought by Petitioner are readily identifiable as a group and share a community of interest, the Employer has carried its burden of proving that all other drivers, including regular education drivers, standby drivers, charter drivers, and trainers (“all other drivers”), share an overwhelming community of interest with the petitioned-for special education drivers and monitors.

The issue to be decided is whether the community-of-interest factors would reasonably support drawing the unit’s boundaries to include only the special education drivers and monitors sought by Petitioner, but *not* all other drivers whom the Employer would include. *Odwalla, Inc.*, 357 NLRB No. 132, slip op. at 5 (2011). In reaching the conclusion that all other drivers must

be included because there is “no legitimate basis upon which to exclude” them (*Blue Man Vegas, LLC v. NLRB* supra at 421), I note that all other drivers share an overwhelming community of interest with the special education drivers and monitors. All other drivers and the petitioned-for special education drivers and monitors perform similar duties and functions, have overlapping and common supervision, are compensated in the same manner and have the same benefits, have regular contact with each other at the facility, are functionally integrated, and enjoy similar terms and conditions of employment that warrant their inclusion in a single unit for purposes of collective bargaining.

All the drivers and monitors report to the same building each workday where they drive and monitor students on their respective school bus routes. The work of drivers is to drive public school students to and from school and to drive students to and from field trips and sporting activities during or outside of regular school hours. Drivers, irrespective of whether they drive regular or special education students, follow the same procedures in performing the pre-trip procedures and mechanical checks and inspection of their assigned buses, using the same tools provided by the Employer, including a zonar computerized system to complete certain tasks incidental to starting the workday. Other than the type of students being transported and the size of the buses driven, all the drivers are performing the same work – the work of driving school buses. The fact that special education drivers may work with wheelchair lifts to transport wheelchair-bound students does not make that position significantly different from a regular education driver position. The evidence establishes that all drivers are trained and competent to transport regular or special education students, and regularly do so.

The distinction the Petitioner seeks to draw between regular education drivers and special education drivers is not a convincing one. The fact that regular education drivers operate 71-

passenger school buses while drivers in special education operate 24-passenger school buses is not significant in the circumstances here. Special education drivers who sign up for charters will operate the larger school buses. So would a standby driver assigned to special education who is tapped to do a regular education route. Trainers train all drivers on both the larger and smaller buses.

All drivers and monitors ultimately are supervised by the location manager, who oversees the entire facility and has direct supervision over the drivers the Petitioner seeks to exclude. The assistant location manager fills in for the location manager as needed and then directly supervises all drivers and monitors. Conversely, in the assistant location manager's absence, the location manager supervises all special education drivers and monitors. In addition to this common supervision at the higher levels at the facility, the evidence establishes that the safety coordinator and dispatcher on each side or wing of the Employer's facility have contact with drivers and monitors working out of the other side or wing of the facility. The Petitioner's contention that a meaningful distinction exists because of a separation between operations in the east wing and west wing is undercut given that the petitioned-for unit already includes special education drivers and monitors working on both sides or wings of the facility. One witness testified that cross contacts with dispatchers could occur where a driver observes another driver on the road having a breakdown or other problem and radios to the facility for help.

All drivers, whether regular education or special education, standby, charter, or trainer, earn the same hourly wage rates and are under the same progression. All the drivers participate in the same bonus and incentive programs. It is clear that in the regular course of their work at the facility and on the road, all drivers have ample opportunity to and do come into contact with one another. The evidence shows that in some cases regular education drivers and special

education drivers transport children to and from the same schools. Further, there are special education students who ride on regular education buses. Drivers use the same employee parking lots and are free to use the break rooms and bathrooms of their own choosing. Standby drivers regularly transport both regular and special education students. Moreover, both regular and special education drivers sign up for charter trips, which run often and up to 30 a day. All drivers are eligible to bid on charter trips based on their facility-wide seniority, which is a strong factor demonstrating a significant level of interchange and functional integration of all drivers. All drivers receive training from the same trainers, who train drivers in the transportation of both regular and special education students.

The overwhelming community of interest shared by all drivers and monitors is further highlighted by the fact that all drivers are subject to the same Employee Handbook and work policies and have the same terms and conditions of employment. The benefit package for these employees, including health insurance, 401(k), paid leave policies, and bonuses, are exactly the same. Drivers, whether driving on the regular education or special education side, have the same application process and requirements including going through the same training with the same trainers, holding a CDL and DOT certification, and having a medical certificate of fitness. None of these qualifications to drive a school bus is peculiar to driving either regular education or special education students. A new employee going through training may be placed on either side of the operations based upon need.

The record evidence here shows only minimal, superficial differences between the drivers transporting regular students and drivers transporting special education students. All drivers, who share the same terms and conditions of employment, drive buses. Given the logistics involved in administering 250 drivers and monitors, it is inevitable that there would be

administrative groupings of employees to make the Employer's operations manageable, rather than a true delineation and marked difference among the drivers. The minimal differences revealed in the record here do not present a sufficient basis to separate the petitioned-for special education drivers and monitors from all other drivers. Thus, even if special education drivers and monitors constitute a readily identifiable group of employees and share a community of interest, I find the petitioned-for unit inappropriate because the special education drivers and monitors do not have a community of interest separate and apart from the larger complement of all drivers and monitors employed by the Employer. Moreover, it is clear from the evidence that the Employer considers regular education drivers, special education drivers, standby drivers, charter drivers and trainers all to be drivers. A unit limited to only special education drivers and monitors creates an impermissibly fractured unit. Thus, I find that the petitioned-for unit is not appropriate.

The Petitioner stated at hearing that it will not proceed to an election in a broader unit.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The parties agree, and I find, the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The parties agree, and I find, the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

ORDER

It is hereby ordered that the petition in this matter is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by August 31, 2015.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: August 17, 2015

/S/

Daniel L. Hubbel, Regional Director
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